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OFFICE OF PETITIONS

In re Application of Marcuse	:	
Application No. 09/439,807	:	Decision on Petition
Filing Date: November 12, 1999	:	
Attorney Docket No. D5381-00001	:	

This is a decision on the petition under 37 CFR 1.181, filed February 14, 2003, to withdraw the holding of abandonment.

The petition is **dismissed as moot**.

A non-final Office action was mailed April 24, 2002. The Office action set a three (3) month shortened statutory period for reply.

A reply to the April 24, 2002 Office action was not matched with the application file. As a result, a Notice of Abandonment was mailed January 29, 2003.

A "Request for Reconsideration of Holding of Abandonment" was filed February 14, 2003. Unfortunately, the Request was not matched with the file and cannot be located. The instant decision is based on the copy of the February 14, 2003 Request filed on March 16, 2007.

Petitioner contends a timely reply was filed in response to the April 24, 2002 Office action. In support of the petition, petitioner has submitted a date-stamped postcard receipt, indicating that a "Response to Office Action (dated mailed: 4/24/2002)" was received by the USPTO on July 23, 2002.

The original reply filed July 23, 2002, was not matched with the file and cannot be located. However, M.P.E.P. 503 states, "[a] postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO." Accordingly, it is concluded that a reply to the April 24, 2002 Office action was timely filed on July 23, 2002, but not matched with the application file.

The Office recognized petitioner filed a timely reply to the April 24, 2002 Office action in a "Letter Rescinding Notice of Abandonment" mailed September 6, 2007.

The September 6, 2007 "Letter Rescinding Notice of Abandonment" withdrew the holding of abandonment. Since the holding of abandonment was withdrawn prior to the instant decision on petition, the instant petition is dismissed as moot.

The examiner will consider the amendment filed July 23, 2002, in due course.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

A handwritten signature in black ink, appearing to read 'C. Brantley', is positioned above the printed name.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions